IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MADISON POWELL, a Minor, by	:	CIVIL ACTION
THERESA POWELL, Guardian, and	:	
THERESA POWELL, Individually,	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
SMITHKLINE BEECHAM CORP.	:	
d/b/a GLAXOSMITHKLINE,	:	NO. 13-03693
	:	
Defendant.	:	

MEMORANDUM RE: PLAINTIFFS' MOTION TO AMEND AND CERTIFY ORDER FOR INTERLOCUTORY REVIEW UNDER 28 U.S.C. § 1292(B)

Baylson, J.   **December 19, 2013**

On September 26, 2013, this Court granted Plaintiffs' motion to remand the case to state

court, because Defendant's notice of removal was filed more than a year after the action

commenced and was untimely under 28 U.S.C. § 1446(b). (ECF 41).

On September 26, 2013 Defendant moved to stay this Court's order dismissing the case,

pending the outcome of Plaintiffs' motions before Judge Buckwalter in Cintao v. SmithKline

Beecham Corp., No, 13-3681, and Nieman v. SmithKline Beecahm Corp., No. 13-3695, to

certify the orders denying remand for interlocutory review under 28 U.S.C. § 1292(b).[1]

Plaintiffs' opposed this motion. This Court granted a temporary stay of the remand through

December 2, 2013.

On November 25, 2013 Plaintiffs moved to certify the order remanding this case for

interlocutory review under 28 U.S.C. § 1292, which Defendant opposed. (ECF 50). The Court

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[1] These motions were later denied.

held a hearing on November 25, at which counsel explained their reasons for taking contrary positions form what they had originally filed. (ECF 54).

On December 2, 2013 this Court issued an extended temporary stay of the remand to January 30, 2014. (ECF 51).

Judge Conner recently granted Plaintiffs' motion to certify interlocutory review under 28 U.S.C. § 1292(b) the order granting remand for interlocutory review in <u>Miller v. SmithKline Beecham Corp.</u>, No. 13-2382, 2013 WL 6506570 (M.D. Pa. Dec. 12, 2013). Judge McLaughlin of this court, had previously denied Plaintiffs' motion to remand, and granted Defendant's motion to transfer venue to the Middle District of Pennsylvania.

A remand order is generally not reviewable. 28 U.S.C. § 1447(d) (excepting cases removed under Section 1442 or 1443). Under 28 U.S.C. § 1292(b), a judge may certify "an order not otherwise appealable" when "such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). This Court will certify the order for interlocutory review under 28 U.S.C. § 1292 so the Third Circuit can determine a fair and uniform resolution for all similarly situated cases. The Court will form the issue in the same language used by Judge Conner.

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MADISON POWELL, a Minor, by THERESA POWELL, Guardian, and THERESA POWELL, Individually	: : : :	CIVIL ACTION
Plaintiffs,	:	
v.	: :	
SMITHKLINE BEECHAM CORPORATION d/b/a GLAXOSMITHKLINE, and PAR PHARMACEUTICALS	: : :	NO. 13-3693
Defendant.	:	

ORDER GRANTING PLAINTIFFS' MOTION TO AMEND AND CERTIFY ORDER FOR INTERLOCUTORY REVIEW PURSUANT TO 28 U.S.C. § 1292(B)

AND NOW, this 19th day of December, 2013, upon consideration of the Plaintiffs' Motion to

Amend and Certify Order for Interlocutory Review Pursuant to 28 U.S.C. § 1292(b) and

Defendant's response, the Court **GRANTS** the motion and certifies to the United States Court of

Appeals for the Third Circuit the following question on interlocutory review:

> Whether a defendant may remove a case a second time based on diversity jurisdiction more than one year after the commencement of the case.

The Court finds the Order of September 26, 2013 "involves a controlling question of law

as to which there is substantial ground for difference of opinion." In order to maintain the status

quo pending any decision by the Third Circuit, the Court will extend the stay until the Third

Circuit has rendered a decision.

BY THE COURT:

/s/ Michael M. Baylson

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Michael M. Baylson, U.S.D.J.